

Food Safety Notice

January 2004

AB 1738 Makes Major Changes to the California Uniform Retail Food Facilities Law for 2004

The California Uniform Retail Food Facilities Law (CURFFL) is the sole basis for standards of food safety and sanitation in retail food facilities in California. On January 1, 2004, a number of modifications to CURFFL that have a major impact on retail food facility operations will go into effect. Some of the changes are technical in nature while others recognize significant developments in the retail food industry and food safety.

- I. The minimum temperature for hot-holding potentially hazardous food (PHF) has been reduced to 135°F.**
- II. Time only, in lieu of temperature, may be used as a public health control for PHF for up to four hours.**
- III. Customers may pass through a food preparation area at the discretion of the establishment operator via a designated pathway.**
- IV. Mobile food facilities need not return to a commissary on a daily basis if serviced by a mobile support unit food.**
- V. Community events can include approved public gathering events.**
- VI. Requirements for event organizers and temporary food facility operations have been changed.**
- VII. Identification information for mobile food facilities, mobile food preparation units, stationary mobile food preparation units, mobile support units, and temporary food facilities has been modified and standardized.**

Minimum temperature for “hot-holding.”

It has long been known that pathogen growth in PHF is suppressed at temperatures above 130°F. The past temperature standard of 140°F includes a significant safety factor. The US Food and Drug Administration (FDA) has stated in a 2003 supplement to its **Model Food Code** that reducing the minimum temperature for hot-holding of potentially hazardous to 135°F will not adversely affect food safety. The retail food industry has stated that reducing the temperature to 135°F will result in energy savings and improved food quality. Therefore, the minimum hot-holding temperature for PHF has been changed in CURFFL to 135°F in every instance where hot holding of PHF is specified.

Time, used as a public health control.

When PHF is held under temperature controls (hot or cold) pathogens multiply very slowly or not at all. These temperature controls serve to keep the food safe. When PHF is removed from temperature control, there is a lag period before rapid and progressive growth of harmful bacteria begins. During this lag period, PHF is perfectly safe for preparation, holding, or consumption. After this lag period, bacterial growth is rapid and progressive, making the food unsafe even if placed

back under temperature control. FDA has determined that a lag period of up to four hours is valid for all foodborne pathogens. The Conference for Food Protection (CFP) has stated that critical control points and critical limits for using time as a public health control are universal. Based on recommendations from CFP and research findings, FDA has incorporated the standard requirements for using time as a public health control into the **Federal Model Food Code**. These same requirements have been amended into CURFFL by AB 1738. Existing requirements in Sections 114055 and 114056 for approved HACCP plans for time in lieu of temperature as a public health control have been deleted.

Section 113995 establishes the requirements for holding of potentially hazardous food in retail food facilities. The following requirements have been inserted into Section 113995 for a working supply of potentially hazardous food before cooking, or for ready-to-eat potentially hazardous food that is displayed or held for service for immediate consumption:

1. Food shall be marked or otherwise identified to indicate the time when four hours have elapsed following removal from temperature control.
2. Any unmarked PHF held using only time as a public health control must be discarded.
3. Within four hours after removal from refrigeration PHF must be cooked and served, served if ready-to-eat, or discarded. **Note:** PHF that is ready-to-eat and held using only time as a public health control should be consumed within four hours. This includes food sold “to-go” for later consumption. This does not apply to food served for immediate consumption at the facility, but which is packaged to take home at the request of the customer.
4. There shall be written procedures available for inspection by the regulatory agency that prescribe compliance with all of these requirements and the requirements for rapid cooling (as specified in Section 114002) of cooked PHF. **Note:** Written procedures must include provisions that any PHF remaining after four hours be discarded, and that any food equipment or utensils in contact with PHF held using only time as a public health control be washed, rinsed, and sanitized before re-use.

All of the above requirements must be complied with in order to be in compliance with Time as a Public Health Control.

The key factor for enforcement officers and food facility operators to remember is that once food has been designated as being held using time as a public health control **IT MAY NOT BE HELD LONGER THAN FOUR HOURS AND NO PRODUCT TAKEN OFF TEMPERATURE CONTROL MAY BE RETURNED TO TEMPERATURE CONTROL AND STORED FOR LATER USE, REGARDLESS OF THE LENGTH OF TIME IT HAS BEEN OFF TEMPERATURE CONTROL.**

Diligent Preparation Caveats

Existing law (Section 113995) contains a provision for holding PHF outside of

temperature control for up to four hours (in two hour increments, except for raw shell eggs) for diligent preparation. This provision, if used along with the provisions for only time as a public health control, could result in unsafe food. Therefore, that provision was deleted. Nevertheless, preparation of a working supply of PHF at ambient temperatures is a practical necessity in food facilities and can be performed safely without invoking the special controls necessary for using only time as a public health control. A working supply of food held for immediate use on a cook line need not be subject to the requirements for only time as a public health control as long as food preparation is a continuous process from preparation to cooking to serving. Food such as salads or sandwiches may be prepared by removing a working supply from temperature control, assembling the ingredients, and placing the finished items back under refrigeration in a timely manner.

Customer access through food preparation areas and the preparation of ready-to-eat foods

Customers may, at the discretion of the operator of the food facility, pass through food preparation areas if the following provisions are met:

1. All food and utensils are protected from potential contamination from persons passing through food preparation areas. Ready-to-eat foods must also be prepared in areas that are separate from raw or undercooked foods.
2. The route of access through food preparation areas is clearly delineated.
3. Food and utensil handling areas are separated from persons passing through food preparation areas by one of the following:
 - a. A distance of at least three feet from the consumer. A physical barrier, such as a rail or wall at least three feet high shall be used to mark the three-foot distance.
 - b. A wall or structure that provides sneeze guard protection.

Mobile Support Units

Prior to AB 1738, mobile food facilities have been required to report to an approved commissary daily for cleaning and servicing. This requirement is costly for mobile food facility operators and difficult to enforce for enforcement officers. Nevertheless, it is necessary to clean, sanitize, and restock mobile food facilities daily. A new category of food facility, a mobile support unit (MSU), has been added to CURFFL to allow mobile food facility operators to properly maintain their units without having to take them to a commissary each day.

MSU Operations

As defined, a mobile support unit is a vehicle that operates from an approved commissary for the purpose of servicing mobile food facilities. This includes the removal of liquid waste and refilling potable water tanks. Mobile support units may service multiple mobile food facilities and must report to a commissary or other approved facility for cleaning, servicing, and storage at least daily. Mobile food facilities that are serviced by mobile support units need not report to a commissary each day, but must be serviced daily and be stored in a manner that protects the unit from contamination.

Reminder: Existing law, Section 114065 (d) requires that food remaining at the end of the operating day be stored at a commissary or other approved facility. Food may not be stored on a mobile food facility unless approval is first obtained from the enforcement agency. All potentially hazardous food held at temperatures of 135 degrees or above must be destroyed at the end of the operating day as required by Section 114065 (k).

MSU Permitting As food facilities, mobile support units will be subject to the local enforcement agency requirements for obtaining a permit, submission of plans to meet certain structural and equipment requirements, and payment of fees. The local governing body shall determine any fee for the permit and related services.

MSU Limitations Mobile support units may not be used to service Mobile Food Preparation Units or Stationary Mobile Food Preparation Units. Mobile Food Preparation Units continue to be required to return to an approved commissary daily for cleaning and restocking.

Community Events

CURFFL Section 113895 has defined a “community event” in the context of temporary food facilities and provides examples of both community events and events that are not “community events” for the purpose of allowing temporary food facilities.

However, CURFFL does not provide any rationale for the exclusion of temporary food facilities from some events that are similar to others in terms of location, duration, and facilities (restrooms, utensil washing, waste disposal, etc.) available.

This has led to some non-uniformity among local enforcement agencies in the classification of community events. Community events continue to be characterized as civic, political, or educational in nature, including state and county fairs, city festivals, circuses, and other public gatherings. Such other events may be approved by local enforcement agencies if they last for no more than 25 days within a 90-day period and have the infrastructure in terms of restrooms, potable water, and waste removal to meet the demands of the expected volume of attendees.

Temporary Food Facilities – Person Responsible for Event, Prepackaged Food Storage

CURFFL has required event organizers to obtain a permit, submit a site plan, and ensure compliance with all requirements by temporary food facility operators at community events. Because of the diverse venues and operating schemes of community events, the event organizer does not always control the restrooms, water supply, etc.

Responsible Person

Local enforcement agencies must be able to hold accountable persons who

provide facilities and services used in common at community events (restrooms, handwashing facilities, utensil washing sinks, janitorial facilities, water supply, and waste removal) for the adequacy and maintenance of that infrastructure. AB 1738 makes it clear that the person responsible for providing shared facilities and services must apply for and obtain a permit. The responsible person often will be the event organizer, but need not be in every instance. Local enforcement agencies should examine any contract that may exist between an event organizer and the owner of the site where a community event occurs to determine who is named in the contract as being responsible for maintenance of the event infrastructure. The event organizer is no longer held liable for the temporary food facility operators' compliance with CURFFL.

Janitorial Facilities

Temporary food facility operators are no longer required to provide their own janitorial facilities.

Site Plans

Site plans showing the location of temporary food facilities, restrooms, shared utensil washing, handwashing, and janitorial facilities must be submitted to the enforcement agency by the person responsible for shared facilities at least two weeks prior to the event.

Prepackaged Supply Storage

Temporary food facility operators are now allowed to store supplies and nonpotentially hazardous food in unopened containers adjacent to (outside of) the temporary food facility or in a “nearby” storage unit during periods of operation. “Nearby” should be interpreted to mean that the storage unit is close enough to be monitored by the operator during operation, usually within the perimeter of the community event.

Identification of Mobile Food Facilities, Mobile Food Preparation Units, Stationary Mobile Food Preparation Units, Mobile Support Units, and Temporary Food Facilities

CURFFL has specified different criteria for identification of certain food facilities that are not permanent at a single location. These include mobile food facilities, mobile food preparation units, stationary mobile food preparation units, mobile support units, and temporary food facilities. AB 1738 specifies:

1. A uniform format for designation of the name of the facility, city, state, zip code, and name of the permittee (if different from the facility name.)
2. A telephone number is no longer required.
3. The information is to be prominent, permanently affixed on two sides in public view, legible, and clearly visible to patrons.
4. The letters in the name of the facility must be at least three inches in height, while the other information must be in letters at least one inch in height.

Errors in the Chaptered Bill

Occasionally errors occur in the process of drafting legislation. In the case of AB 1738 there were two minor errors.

The first error involves the insertion of new Section 114287.5 to Chapter 12. This section deals with mobile food facility requirements to report to an approved commissary daily unless serviced by a mobile support unit. The language in the section is correct, but the Chapter deals not with mobile food facilities, but mobile food preparation units. The proper location for this section would be Chapter 11.

The second error involves the inadvertent change of the cold holding temperature requirement for potentially hazardous food, but only at satellite food distribution facilities. Section 114367.5 now specifies that written procedures must provide for holding potentially hazardous food at 45 degrees F rather than 41 degrees F at satellite food distribution facilities. These errors have been noted to the author and Office of Legislative Council and will be addressed in future legislation.

More information

Copies of AB 1738 (Chapter 453) are available for download via the Internet at <http://www.legislature.ca.gov/>. A copy of the latest version of CURFFL may be retrieved from <http://www.dhs.ca.gov/ps/fdb/HTML/Food/indexfoo.htm>. If you have any questions regarding this notice contact the Department of Health Services, Food and Drug Branch (FDB) at (916) 650-6500 or consult the FDB web page at dhs.ca.gov/fdb/index.htm.

List of CURFFL Sections Affected by AB 1738

Sections amended: 113750, 113785, 113895, 113995, 113998, 114002, 114055, 114056, 114265, 114294, 114300, 114302, 114303, 114304, 114313, 114314, 114315, 114319, 114332.3, 114362, 114367.5.

Sections added: 113750.1, 113817, 113841, 114287.5, and 114305.

Section repealed: 114322